

New Commercial Law

Effective July 15, 2008

As of July 15, 2008, the following laws govern how out-of-state commercial licensees can practice real estate brokerage in the state of Kentucky.

324.235 Definitions for KRS 324.235 to 324.238.

As used in KRS 324.235 to 324.238, unless the context requires otherwise:

- (1) (a) "Commercial real estate" means any parcel of real estate located in this state that is:
 1. Lawfully used primarily for sales, retail, wholesale, office, research, institutional, warehouse, manufacturing, or industrial purposes;
 2. Lawfully used primarily for multifamily residential purposes involving five (5) or more dwelling units; or
 3. Zoned for a business or commercial use by a planning unit acting pursuant to KRS Chapter 100.
- (b) "Commercial real estate" does not include single-family residential units such as condominiums, townhouses, manufactured homes, or homes or lots in a subdivision when sold, or residential units otherwise conveyed on a unit-by-unit basis, even if those units are a part of a larger building or parcel of real estate containing more than four (4) residential units;
- (2) "Cooperation agreement" means a written co-brokerage, referral, affiliation, or other agreement or arrangement between an out-of-state principal broker and a Kentucky cooperating broker;
- (3) "Kentucky cooperating broker" means a principal broker licensed under this chapter who has entered into a written cooperation agreement with an out-of-state principal broker;
- (4) "Out-of-state principal broker" means an individual who is licensed as a real estate broker in a jurisdiction other than Kentucky, and who is the designated broker with whom one (1) or more out-of-state licensees are affiliated or associated; and
- (5) "Out-of-state licensee" means an individual who is licensed as a real estate broker or real estate sales associate in a jurisdiction other than Kentucky, and who is affiliated or associated with an out-of-state principal broker.

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324.236 Engaging in commercial real estate brokerage by out-of-state principal broker and out-of-state licensee.

An out-of-state principal broker and his or her out-of-state licensee, for or in the expectation of a fee, commission, compensation, or other valuable consideration, may engage in real estate brokerage with respect to commercial real estate if the requirements of this section are satisfied:

- (1) The out-of-state licensee shall be licensed with and work under the direct supervision of the out-of-state principal broker;
- (2) The out-of-state principal broker shall enter into a written cooperation agreement with the Kentucky cooperating broker that shall include but not be limited to the following:
 - (a) The terms of cooperation and compensation between the out-of-state principal broker and the Kentucky cooperating broker;
 - (b) A description of the parties, the commercial real estate, or other information sufficient to identify the specific transactions governed by the cooperation agreement; and

- (c) The effective date and a definite termination date of the cooperation agreement; and
- (3) Regarding transactions that fall within the scope of the cooperation agreement specified in subsection (2) of this section, the out-of-state principal broker and the out-of-state licensee shall:
 - (a) Work in cooperation with a Kentucky cooperating broker;
 - (b) Furnish the Kentucky cooperating broker with a copy of the out-of-state principal broker's and out-of-state licensee's current real estate license from the jurisdiction of his or her primary place of business;
 - (c) Limit acts of real estate brokerage to commercial real estate transactions referenced in the cooperation agreement;
 - (d) Only list commercial real estate located in this state for sale, lease, or exchange if the real estate is co-listed with the Kentucky cooperating broker;
 - (e) Be prohibited from holding escrow funds, security deposits, or other moneys in escrow or other accounts located outside this state;
 - (f) Promptly provide the Kentucky cooperating broker with relevant documentation relating to the specific transaction or transactions governed by the cooperation agreement;
 - (g) Keep the Kentucky cooperating broker fully informed of all activities through prompt communications;
 - (h) Perform all actions under the direct supervision and control of the Kentucky cooperating broker;
 - (i) List his or her individual name, firm name, or both in advertising for commercial real estate transactions only if the advertising:
 - 1. Includes with equal prominence the same identifying information for the Kentucky cooperating broker and his or her relevant licensees, except that, with respect to multistate portfolio listings, only the name or firm of the Kentucky cooperating broker printed in legible type shall be mandatory, with no requirement concerning prominence; and
 - 2. Otherwise complies with the requirements of this chapter;
 - (j) Comply with and be bound by and subject to Kentucky law and the regulations of the commission, including but not limited to KRS 324.235 to 324.238;
 - (k) Not engage in improper conduct as set out in KRS 324.160(4); and
 - (l) File with the Kentucky cooperating broker a true and complete notice of affiliation in compliance with KRS 324.327.

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324.237 Notice of affiliation with Kentucky cooperating broker required.

- (1) A notice of affiliation required under KRS 324.236(3)(l) shall be filed with the Kentucky cooperating broker and shall include the following:
 - (a) The name, firm name, firm address, firm telephone number, and real estate license number of the Kentucky cooperating broker;
 - (b) The name, firm name, firm address, firm telephone number, address for service of process, and current real estate license numbers and jurisdictions of licensure of both the out-of-state principal broker and out-of-state licensee;
 - (c) The effective date and a definite termination date of the corresponding cooperation agreement between the Kentucky cooperating broker and the out-of-state principal broker;
 - (d) An agreement that the out-of-state principal broker and out-of-state licensee shall:
 - 1. Each comply with and be subject to KRS 324.235 to 324.238, Kentucky law, and administrative regulations promulgated by the commission;
 - 2. Not engage in improper conduct as set out in KRS 324.160(4); and

3. Ensure that all documentation pertaining to transactions falling within the scope of the cooperation agreement complies with Kentucky law;
- (e) The irrevocable consent of the out-of-state principal broker and out-of-state licensee that legal actions may be commenced against them in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of process on the Kentucky Secretary of State pursuant to KRS 454.210, and stipulating and agreeing that service of process on the Kentucky Secretary of State shall be taken and held in all courts to be as valid and binding as if service had been made upon the out-of-state principal broker and out-of-state licensee in this state;
- (f) A statement that the out-of-state principal broker and out-of-state licensee are trustworthy and competent to transact business in a manner to safeguard the interests of the public, and that during the five (5) year period prior to the filing of the notice of affiliation:
 1. No state has revoked the real estate license of the out-of-state principal broker or out-of-state licensee pursuant to a disciplinary action; and
 2. Neither the out-of-state principal broker nor the out-of-state licensee has been convicted of a felony in any jurisdiction; and
- (g) A statement that the out-of-state principal broker and out-of-state licensee each consent to any criminal records check undertaken by the commission in connection with any investigation pursuant to KRS 324.150.
- (2) A notice of affiliation shall be true and complete and shall be signed or otherwise authenticated under penalty of perjury by both the out-of-state principal broker and out-of-state licensee.
- (3) An out-of-state principal broker and out-of-state licensee may enter into cooperation agreements and notices of affiliation with respect to more than one (1) Kentucky cooperating broker.

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324.238 Compliance with KRS 324.160(4) and 324.235 to 324.238 -- Sanctions and penalties.

For purposes of KRS 324.235 to 324.238:

- (1) A person licensed in a jurisdiction where there is not a legal distinction between a real estate principal broker and a real estate broker or salesperson shall satisfy the requirements of an out-of-state principal broker;
- (2) Preliminary exchanges of information and materials, discussions, and investment or other advice pertaining to commercial real estate shall not constitute acts of real estate brokerage by out-of-state principal brokers or out-of-state licensees;
- (3) If any change in circumstances prevents compliance by the out-of-state principal broker or out-of-state licensee, that person shall immediately cease and desist from performing acts of real estate brokerage with respect to commercial real estate; and
- (4) The commission may impose one (1) or more of the following sanctions or penalties against an out-of-state principal broker or an out-of-state licensee for failure to substantially comply with KRS 324.235 to 324.238 or for engaging in improper conduct as set out in KRS 324.160(4):
 - (a) Levy fines not to exceed one thousand dollars (\$1,000);
 - (b) Issue a formal or informal reprimand;
 - (c) Report misconduct to the licensing authority of any state;
 - (d) Revoke or suspend the authority of the out-of-state principal broker or out-of-state licensee to perform acts of real estate brokerage with respect to commercial real estate;

(e) Publish and maintain a public registry of any sanctions or penalties imposed pursuant to this subsection; and

(f) Report suspected violations of KRS Chapter 523 to the Commonwealth's attorney of the county in which the office of the commission is located.

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